

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-464-W/S - ORDER NO. 98-555  
JULY 20, 1998

IN RE: Mark W. Erwin, Riverhills,	)	ORDER <i>✓ me</i>
and other Lake Wylie Consumers,	)	DENYING
Complainants,	)	PETITION FOR REHEARING
	)	OR RECONSIDERATION
vs.	)	OF ORDER NO. 98-384
	)	
Carolina Water Service, Inc.,	)	
	)	
Respondent.	)	
	)	

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This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Rehearing or Reconsideration filed by Carolina Water Service, Inc. ("CWS" or "Company"). By its Petition, CWS requests rehearing or reconsideration of Commission Order No. 98-384, dated May 27, 1998, issued in the above-captioned docket. For the reasons set forth below, the Commission denies the Petition for Rehearing or Reconsideration filed by the Company.

The instant docket came before the Commission by way of a complaint filed by Mark Erwin and various other consumers in the Lake Wylie area (collectively referred to as "Complainants") served by the Company. The docket was initially opened on the complaint of Mr. Erwin regarding the application of impact fees by the Company. Thereafter, the Commission combined Mr. Erwin's complaint with the joint complaint of

seven organizations which challenged the quality of water and the rates charged by the Company under the bulk supply agreement with York County.

After public hearing in this docket, the Commission issued Order No. 98-384 in which the Commission ordered that Staff file with the Commission within sixty (60) days a report which separates the net plant investment of CWS into individual serving areas. A Commission decision regarding the level of impact fees was held in abeyance until the Commission receives the information from Staff. The portion of Order No. 98-384 concerning impact fees was not addressed by the Company's Petition. However, the Company reserved the right to address the issue of impact fees after the Commission makes a determination on that issue.

Order No. 98-384 also ordered that the sewer bills of the customers in the Riverhills Subdivision of the Lake Wylie area should be capped at 10,500 gallons usage per month for the months of May through September. The Company takes exception with the Commission's decision regarding this "cap" and filed its Petition to address the portion of Order No. 98-384 which relates to the cap.

The Company first alleges that the Commission erred by relieving "the complainants of their burden of proving that the Company's authorized sewer charge should be reduced." Petition, p. 2, paragraph 4(a). The Company argues that the party seeking a reduction in a previously established rate must prove that the rate is unjust and unreasonable, noncompensatory, inadequate, discriminatory, or preferential or in any wise in violation of any provision of law and asserts that the Complainants presented no evidence that the Company's rates resulted in unjust, unreasonable, or discriminatory rates. Petition, p.2, paragraph 4(a).

In imposing the cap on the sewer rates for the months of May through September, the Commission found in Order No. 98-384 that such a cap on sewer bills was reasonable. Upon weighing the evidence presented, the Commission determined that irrigation of lawns and gardens during the summer months created higher sewer bills and found that a cap was reasonable since irrigation usage does not discharge into the sewer system. The Commission therefore determined that it was unreasonable for customers to pay sewer charges based on water usage that is not related to sewer usage and which will not be treated in the sewer system. S.C. Code Ann. Section 58-5-290 (1976) grants the Commission the authority to correct rates, fares, tolls, rentals, charges, or classifications which the Commission determines, after hearing, are unjust, unreasonable, noncompensatory, inadequate, discriminatory or preferential. Pursuant to the authority granted by S.C. Code Ann. Section 58-5-290, the Commission corrected the rates which it determined to be unreasonable by adding the cap of 10,500 gallons for the months of May through September to account for the water used in irrigation.

Next the Company “submits that the Commission erred in relying upon ‘the fact that water used for irrigation is not released into the [sewer] system’ in concluding that a sewer cap should be imposed.” Petition, p.2, paragraph 4(b). The Company asserts that the Commission failed to consider that irrigation meters are available to the customers. In reaching its decision in Order 98-384, the Commission considered the evidence before it and made its determination that the cap of sewer rates was proper for the months of May through September. In Order No. 98-384, the Commission stated that it is aware of the fact, and took judicial notice of the fact, that water used for irrigation is not released into the sewer system. S. C. Code Ann. Section 58-5-300 (1976) allows the Commission,

in making a determination under S.C. Code Ann. Section 58-5-290, to consider all facts which in the Commission's judgment have a bearing upon a proper determination of the question, although not set forth in the complaint or application. The Commission took notice of a common fact and properly considered that fact in making its determination. The Commission finds no error in its determination or consideration that water used for irrigation is not released into the sewer system.

CWS next alleges the Commission erred in not making a determination that CWS was exceeding its authorized operating margin. CWS asserts that since there was no determination made that it was earning in excess of its authorized operating margin that there is no unjust or unreasonable rate which the Commission can reduce under S.C. Code Ann. Section 58-9-290. The Commission finds this assertion to be without merit. S.C. Code Ann. Section 58-5-290 contains no explicit requirement that an authorized operating margin or rate of return be exceeded before the provisions of 58-5-290 are applicable. While exceeding an authorized operating margin or rate of return may be one instance where rates and charges may be unjust and unreasonable, such a situation is not the only case where rates and charges may be unjust or unreasonable. Therefore, the Commission discerns no error in not finding that the Company was exceeding its authorized operating margin as such a finding is not necessary for the Commission to correct a rate or charge which the Commission determines to be unreasonable.

The Company next asserts that the Commission's decision in Order No. 98-384 "ignores the Commission's prior decisions authorizing the Company's current rate structure and finding it to be sound." Petition, p. 3, paragraph 4(d). The Company also asserts that the Commission approved the contract between York County and the

Company and that “imposing a cap means that the Company suffers losses on the purchase of these bulk services, resulting in an unconstitutional taking and confiscation of its property.” Petition, p.3, paragraph 4(e). The Company complains that Order No. 98-384 fails to account for the loss of revenue the Company will experience as a result of the cap and fails to provide for an alternative means to capture this lost revenue. Petition, p. 3, paragraph 4(d) and 4(e). The Commission first notes that any loss of revenue is speculative at this point. There is no certainty that any customer will exceed the cap imposed by Order No. 98-384, thereby causing the cap to be invoked and possibly resulting in the Company losing revenue. The Commission would further note that an authorized return or operating margin, and the rates approved thereunder, is not a guarantee that a company will achieve the authorized return or operating margin. The rate schedule approved under an authorized return or operating margin is designed to allow a company the opportunity to earn the authorized return or operating margin but does not guarantee that the approved return or operating margin will be achieved. The imposition of a cap for five months of the year in one subdivision served by the Company does not lead to a redesign of the rate structure previously approved for the Company system-wide. Any possible ill-effect of the cap is speculative at this point. Further, should the Company experience losses under the cap, the Company is not without recourse itself. The same statutes which allow the consumers to file a complaint seeking a correction of a rate as unjust or unreasonable also allow a company to seek a correction of a rate as inadequate or noncompensatory. Regulation does not ensure recovery of every penny spent by the Company. Imposition of a cap does not result in an

unconstitutional taking or confiscation of property. The Commission therefore denies reconsideration or rehearing based on these assertions.

CWS next contends that the Commission erred by failing to acknowledge that certain Complainants were aware of Company's currently authorized rates and charges, including sewer service charges, and yet withdrew their intervention from the docket in which the bulk supply agreement with York County was approved. Petition, pp. 3-4, paragraph 4(f). Further, the Company asserts that the Commission's Order No. 98-384 also "ignores the fact that Staff witness Walsh did not recommend a sewer cap." Petition, p. 4, paragraph 4(f). The record reveals that the intervenors in the docket where the bulk agreement with York County was approved indicated that they understood that their bills would increase. However, the fact that consumers thought or knew that their bills would increase does not prevent the Commission from subsequently correcting a rate or charge which the Commission subsequently finds to be unjust or unreasonable under S. C. Code Ann. Section 58-5-290 (1976).

CWS also seems to assert that the Commission cannot impose a cap because the Staff witness did not recommend a cap. The Staff witness presents testimony just like any other witness in a proceeding. The Commission must weigh the testimony and evidence of a Staff witness just like any other competent witness. The testimony of a Staff witness is given no greater weight than the testimony of any other witness. While it is true that the Staff witness did not recommend a cap, it is equally true that the Staff witness did not oppose a cap either. In fact, the testimony of the Staff witness indicates that when the notice of the application for approval of the bulk agreement was issued the notice contained a cap of 10,000 gallons per month on sewer charges. The testimony also

indicates that the application which contained the 10,000 gallon cap was later withdrawn, but there is evidence of record which indicates that a cap on sewer rates was at one time contemplated by the Company. Therefore, the Commission finds no merit in the Company's argument on this point.

The Company also argues that "the Commission erred in setting the cap at 10,500 gallons, because there was no evidence to support this number." Petition, p. 4, paragraph 4(g). In this case, the Commission found that the sewer rates for the months when water usage for irrigation was highest were not reasonable. The Commission then imposed a cap of 10,500 gallons for the months of May through September, when customers would be irrigating lawns and gardens. Staff witness Walsh testified that in a prior docket, subsequently withdrawn by the Company before the Commission ruled on that application, concerning the bulk supply agreement between CWS and York County, CWS had proposed a monthly cap of 10,000 gallons. Witness Harrington of the Riverhills Community Association suggested a cap of 6,100 gallons monthly. Several public witnesses testified at the night hearing and complained about the high bills associated with the summer months when irrigation is highest. In fashioning a fair compromise between the consumer and the Company, the Commission weighed the evidence of record and determined that a cap was appropriate for the months when irrigation is prevalent and based the cap on an amount that was determined fair to the Company and the Consumer. The Commission acknowledges that the cap is higher than the cap that had been previously proposed by the Company in the prior docket which was withdrawn. But the Commission believes that its determination regarding the amount of the cap and the months when the cap is in place is fair and reasonable based on the

evidence of record, and the Commission finds no error with its decision based on this ground raised by the Company.

CWS alleges error by the Commission “in imposing a cap because such a conclusion fails to acknowledge the existence of inflow and infiltration in River Hills subdivision.” Petition, p. 4, paragraph 4(h). Company witness Wenz testified that inflow and infiltration is experienced by every sewer system. However, witness Wenz did not quantify the amount of inflow and infiltration within the Riverhills Subdivision. The Commission acknowledges that inflow and infiltration occurs, but the Commission also recognizes that it is the responsibility of every sewer utility to keep its physical plant operational. If inflow and infiltration is a problem within the Riverhills Subdivision, then it is incumbent upon the Company to make repairs to its system to keep the inflow and infiltration problem under control. The Commission does not ensure, and the Company should not expect, that regulation will allow recovery of every penny spent. The Company has a duty to keep its plant in good condition and to provide reasonable and sufficient service. The Company is the only one that can correct or minimize any inflow and infiltration problem which may exist. The Commission finds no merit in the Company’s contention that reconsideration or rehearing should be granted based on its allegation that the Commission failed to acknowledge the existence of inflow and infiltration.

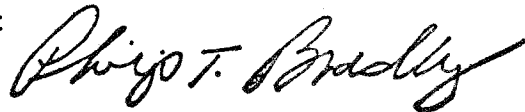
Finally, the Company asserts that Commission Order No. 98-384 fails to comply with S.C. Code Ann. Sections 1-23-350 and 1-23-380. Petition, p. 4, paragraph 4(i). However, the Company fails to set forth with any particularity how Order No. 98-384 fails to comply with those code sections. As the Company has not specifically addressed

how Order No. 98-384 fails to comply with Sections 1-23-350 and 1-23-380, the Commission does not have sufficient information upon which it may address this “blanket” assertion. The Commission believes that its decision in Order No. 98-384 is fully supported by the record and that the Order sets forth the Commission’s conclusions of law and findings of fact. Therefore, the Commission denies rehearing or reconsideration on this non-specific, general assertion.

IT IS THEREFORE ORDERED THAT:

1. For the reasons set forth above, the Petition for Rehearing and Reconsideration filed by the Company is denied.
2. This Order shall remain in full force and effect until further Order of the Commission.

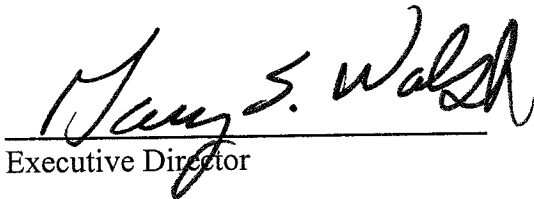
BY ORDER OF THE COMMISSION:



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Chairman

ATTEST:

  
Executive Director

Acting

(SEAL)